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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

DESHAWN LYDELL DAVIS,

Defendant and Appellant.

B206381

(Los Angeles County
Super. Ct. No. LA056906)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Richard H. Kirschner, Judge. Appeal dismissed.

Linn Davis, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

On September 20, 2006 Deshawn Lydell Davis was convicted of possession of a controlled substance (Health & Saf. Code, § 11350) in Los Angeles Superior Court case No. LA053314.¹ The trial court ordered probation and granted deferred entry of judgment for 24 months.

On April 13, 2007 Davis was arrested for attempting to cash a forged and counterfeit check in the amount of \$2,931 at two branches of Wells Fargo Bank in Los Angeles. Davis was charged by information in case No. LA055596 with committing two counts of forgery (Pen. Code, § 470, subd. (d))² and two counts of second degree burglary (§ 459).³ As the result of a negotiated plea, Davis was sentenced to six years in state prison.⁴

On the day he was to begin his prison term, Davis was charged by criminal complaint in case No. LA056906 with committing one count of identity theft (§ 530.5, subd. (a)), two counts of forgery (§ 470, subd. (d)) and one count of grand theft of personal property in the amount of \$7,860.01 (§ 487, subd. (a)) in or about February 2007. It was also alleged he had suffered three prior serious or violent felony convictions within the meaning of the Three Strikes law and had served two separate prison terms for felonies (§ 667.5, subd. (b)).⁵

Appearing with private counsel on November 27, 2007 Davis waived his right to a preliminary hearing and was held to answer on all the charges in case No. LA056906. On December 11, 2007 Davis agreed to plead guilty, to admit a 2000 conviction for

¹ Case references are to Los Angeles Superior Court cases.

² Statutory references are to the Penal Code.

³ The probation officer's report indicates there were one or more additional special allegations under the "Three Strikes" law (§§ 667, subds. (b)-(i); 1170.12, subds. (a)-(d)).

⁴ The record on appeal does not include the charge(s) to which Davis pleaded guilty, any allegations he may have admitted, the basis for his sentence or other terms of his plea agreement.

⁵ The facts underlying these charges are not in the record on appeal.

robbery and a 2001 conviction for making a criminal threat as prior strike convictions and to admit he had violated probation in case No. LA053314 in return for an aggregate state prison sentence of 32 months, which was to be served consecutively to the six-year sentence imposed in case No. LA055596. Davis also agreed to pay \$7,880.01 in restitution. The remaining charges and special allegations were to be dismissed.

At the time Davis entered his plea, he was advised of his constitutional rights and the nature and consequences of his plea orally and in writing.⁶ The prosecutor reiterated that Davis would be admitting the convictions for robbery in 2000 and making a criminal threat in 2001 as prior strike convictions. Davis stated he understood and waived his constitutional rights, acknowledged he understood the consequences of his plea and admissions and accepted the terms of the negotiated agreement.

Defense counsel joined in the waivers of Davis's constitutional rights and concurred in the plea admissions. Defense counsel stipulated to, and the court found, a factual basis for the plea based on the police report. Pursuant to the agreement, Davis was sentenced to 16 months in state prison, or one-third the middle two-year term for grand theft, doubled under the Three Strikes law, to be served consecutively to the six-year sentence imposed in case No. LA055596.

The court then turned to the alleged probation violation in case No. LA053314. As part of the negotiated agreement, Davis had waived his right to a probation violation hearing and admitted he had violated probation in that case. The court found Davis had violated probation by failing to obey all laws, revoked and terminated probation and sentenced Davis to 16 months in state prison or one-third the two-year middle term for possession of a controlled substance, doubled under the Three Strikes law, to be served

⁶ At the plea hearing the court referred to a "felony advisement of rights, waiver and plea form," and asked Davis if he had initialed the boxes and signed the form. Davis said he had. The court then inquired whether Davis initialed and signed the form to indicate he had read and understood the form, and had agreed to each of its written terms and conditions. Davis answered, "Yes sir." The written form is not part of the record on appeal.

consecutively to the terms imposed in case Nos. LA055596 and LA056906. The court ordered Davis to pay a \$20 court security fee, a \$200 restitution fine, a \$50 laboratory fee and \$7,880.01 in restitution. A parole revocation fine was imposed and suspended pursuant to section 1202.45. The court dismissed the remaining counts and special allegations on the People's motion. Davis was awarded a total of 362 days presentence credit for both cases (242 actual days and 120 days of conduct credit).

Davis filed a timely notice of appeal from the judgment in case No. LA056906 in which he checked the preprinted boxes indicating, "This appeal is based on the sentence or other matters occurring after the plea"; and "This appeal challenges the validity of the plea or admission."⁷ As grounds for seeking a certificate of probable cause, Davis claimed his defense counsel was constitutionally ineffective in that he had "coerced" Davis to plead guilty by leading him to believe he was to be sentenced "to a minimum of three years in state prison." Davis also asserted he had been denied his due process rights in that the court "sentenced [him] to seven years . . . even though [he] never admitted" his prior strike allegations. Davis's request for a certificate of probable cause was denied.

We appointed counsel to represent Davis on appeal. After an examination of the record, counsel filed an "Opening Brief" in which no issues were raised. On June 10, 2008 we advised Davis he had 30 days in which to personally submit any contentions or issues he wished us to consider. No response has been received to date.

We have examined the entire record and are satisfied Davis's attorney has fully complied with the responsibilities of counsel and no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

A criminal defendant who appeals following a plea of no contest or guilty without a certificate of probable cause can only challenge the denial of a motion to suppress evidence or raise grounds arising after the entry of the plea that do not affect its validity. (Cal. Rules of Court, rule 8.304(b).) In his request for a certificate of probable cause,

⁷ The Notice of Appeal does not include the judgment in case No. LA053314.

Davis challenges the validity of his plea or admission, as well as the validity of his sentence imposed as part of his plea. Notwithstanding the fact Davis's constitutional claims are without support in the record, and he has misstated the sentence imposed by the court, because Davis is, in substance, attacking the validity of his plea, his notice of appeal is inoperative; and the appeal must be dismissed. (Pen. Code, § 1237.5; see *People v. Shelton* (2006) 37 Cal.4th 759, 769-771; *People v. Panizzon* (1996) 13 Cal.4th 68, 79.)

The appeal is dismissed.

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PERLUSS, P. J.

We concur:

WOODS, J.

JACKSON, J.